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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1 ✓
for Local Exchange Carriers)	
)	
Interexchange Carrier Purchases of)	
Switched Access Services Offered by)	CCB/CPD File No. 98-63
Competitive Local Exchange Carriers)	
)	
Petition of US West Communications, Inc.)	
For Forbearance from Regulation as a)	CC Docket No. 98-157
Dominant Carrier in the)	
Phoenix, Arizona MSA)	

**BELL ATLANTIC¹ OPPOSITION TO NETWORK ACCESS SOLUTIONS CORP.
PETITION FOR PARTIAL RECONSIDERATION**

Network Access Solutions ("NAS") seeks to more than double the competitive benchmark that local exchange carriers must satisfy before they get even minimal pricing flexibility to offer competitive dedicated transport services. Under the standard urged in the NAS petition, basic pricing flexibility would be denied even in some market areas where every single dedicated transport customer has a competitive alternative available to them.

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

Moreover, the only rationale NAS offers for its substitute rule is based on factual mistakes. The Commission should deny the NAS petition.²

NAS largely ignores the order that it seeks to overturn. In that order the Commission explained the need to provide incumbent local exchange carriers the ability to offer discounted and contract tariffs (the so called “phase I relief”). In doing so, the Commission recognized that the current restrictive rules were anticompetitive and that denying pricing flexibility “imposes costs on carriers and the public.” Order, ¶ 92. Indeed, to deny such benefits “may create a price umbrella for competitors” (like NAS), thereby artificially inflating the price of the services. *Id.* NAS fails to address how its proposal would avoid such customer harms.

As an initial matter, phase I relief provides only minimal flexibility to modify prices to respond to increasing competition. Even after achieving phase I relief, services remain under price cap regulation. Indeed, given the limited nature of phase I relief, there is no real need for any competitive threshold. And NAS does not challenge the threshold for phase II relief, which removes a service from price regulation.

Nonetheless, the Commission has imposed a significant bar to obtaining even phase I relief: requiring a demonstration that competitors have collocated in 15% of the wire centers within a single Metropolitan Statistical Area (“MSA”) served by a carrier. Moreover, collocation must actually be in use to provide competing service. As the

² In addition to the NAS petition and Bell Atlantic’s own petition, two other reconsideration petitions were filed on this order. GTE filed a petition seeking the same relief as the Bell Atlantic Petition (removal of the mandatory waiver of the lower formula adjustment protection as a prerequisite for pricing flexibility) as well as a technical correction to the order. United States Telephone Association filed a petition seeking several other technical corrections. Bell Atlantic supports these other petitions.

Commission recognized, such collocation “represents a financial investment by a competitor to establish facilities within a wire center.” Order, ¶ 81.

While the Commission’s rules impose unnecessary limitations, it is clear that once the competitive thresholds have been reached, there can be no legitimate argument that allowing phase I type relief poses any competitive risk. As the Commission recognized, the investment associated with collocation demonstrates that rivals have entered the market. Because no matter what happens to those rivals, their facilities remain available, and there is no benefit to the incumbent in driving out a rival from the market. The “reduced profits caused by exclusionary pricing behavior” cannot be recouped by other sales because a new rival will take advantage of the existing facilities and continue to compete. Order, ¶ 80.

Again NAS does not recognize, much less respond to, the economic logic inherent in this portion of the Commission’s order.

Instead, NAS relies on an erroneous factual claim: that Bell Atlantic previously had proposed a higher benchmark of 75% to obtain relief. Petition at 5. In fact, the Commission benchmark is more stringent than Bell Atlantic’s proposal. See Bell Atlantic *ex parte* letter from Susanne Guyer, CC Docket No. 96-262 (filed Feb. 12, 1999). First, the 75 percent trigger proposal cited by NAS was Bell Atlantic’s proposed threshold to remove services from price regulation altogether. For relief similar to that allowed by the Commission in phase I, Bell Atlantic had proposed a 25% trigger that was based on different (and less stringent) factors than those ultimately adopted by the FCC. Second, Bell Atlantic’s percentage was based on demand (using DS1 equivalents), while the Commission’s benchmark is based on the number of central offices in which competitors are collocated. As a result, concentrations of demand (where competition is at its greatest) receives a lessor

weight under the Commission benchmark. Third, Bell Atlantic's benchmark was based on all collocated offices, while the Commission benchmark is limited to offices with operational fiber based collocators.³ Order, ¶ 81. In other words, competitors that use collocation but depend entirely on the incumbent carrier's network (such as some competitive DSL service providers) would not count toward meeting the competitive threshold under the Commission's new requirement. The net result of these changes is that the 15% benchmark, subject to the limitations imposed by the Commission, is far more difficult to achieve than the 25% benchmark as defined by Bell Atlantic.

In contrast, NAS argues that the Commission should use its more stringent definitions, but should increase the competitive trigger for obtaining even the minimal Phase I relief up to 50 percent of the central offices in a given MSA. Given that demand for the services at issue is concentrated in just a few wire centers, the high benchmark sought by NAS makes no sense. For example, approximately 93% of Bell Atlantic's special access demand comes from 20% of its central offices. *Petition of Bell Atlantic for Forbearance*, CC Docket No. 99-24, Affidavit of Michael R. McCullough, (Attachment B) at ¶ 9 (filed Jan. 20, 1999). Indeed, given the concentration in the market, the modifications sought by NAS could make regulatory relief impossible in some areas – even if every single customer

³ NAS uses Bell Atlantic data for Massachusetts, Maryland and Virginia in an effort to argue that these jurisdictions fail to meet Bell Atlantic's proposed competitive trigger, while exceeding the trigger adopted by the Commission. Petition at 5. Given the difference in the definitions underlying the competitive triggers, its comparison is meaningless. In particular, NAS includes collocation arrangements that are not operational fiber-based collocators. Regardless, given the growth in collocation, the NAS reliance on year-old data is unreasonable. For example, in New York, the annualized growth rate in collocation in just the last two months is over 200%. *Application by New York Telephone Company for Authorization to Provide In-Region, InterLATA Services in New York*, Docket No. 99-295, Reply Declaration of William E. Taylor, at 13 (filed Nov. 8, 1999).

had a competitive alternative. More than 40 percent of Bell Atlantic's wire centers have no special access demand at all. That percentage is even higher in certain MSA and non-MSA areas. Given little or no demand in so large a proportion of its service territory, demonstrating that collocators are present and operational in 30 to 50 percent of the offices in an MSA may well be impossible. Thus, under the NAS proposal, Bell Atlantic and other incumbent local exchange carriers could be permanently foreclosed from offering customers lower prices by invoking the limited flexibility that can be obtained through Phase I relief.

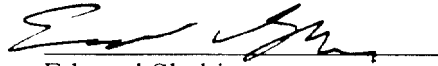
Implicit in the NAS petition is also a request to further subdivide the market by creating a different competitive trigger in order to obtain relief for DS3 or higher capacity transport. NAS provides no argument to justify why such a split is necessary or reasonable. It also does not evaluate how many additional petitions would be required by this proposed subdivision. Given that the services in question can be substitutes for one another, there is no economic justification for treating them as separate markets.

Regardless, the arguments raised by NAS are already addressed by the higher competitive trigger for phase I relief for the channel terminations to customer premises. Higher capacity services are primarily used in the provision of facilities between the incumbent local exchange carrier's central offices and the interexchange carrier's point of presence. Lower capacity services are generally used to provision services between the incumbent's central offices and end user customer premises. The fact that the Commission adopted an extremely high competitive trigger for phase I relief for the channel terminations to customers premises already provides the protection that NAS claims to be seeking in its petition.

Conclusion

The Commission should deny the NAS Petition.

Respectfully submitted,



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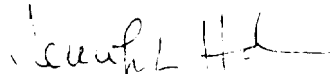
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 1999, copies of the foregoing
"Opposition to Network Access Solutions Corp. Petition for Partial Reconsideration" were sent
by first class mail, postage prepaid, to the parties on the attached list.



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